

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney
2 JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
3 DAVID J. KENNEDY (NYBN 2863181)
Special Assistant United States Attorney
4 SARA WINSLOW (DCBN 457643)
Assistant United States Attorney

5 450 Golden Gate Ave., Box 36055
6 San Francisco, CA 94102
Telephone: (415) 436-6925 (Winslow)
7 Facsimile: (415) 436-6748

8 86 Chambers St., 3rd Floor
New York, NY 10007
9 Telephone: (212) 637-2733 (Kennedy)
Facsimile: (212) 637-2686

10 Attorneys for Plaintiff United States

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO HEADQUARTERS**

15 UNITED STATES OF AMERICA,)

16 Plaintiff,)

17 v.)

18 NATURE'S FARM PRODUCTS, INC.,)
19 DENNIS CHOI, and PETER PIZZO,)

20 Defendants.)
21

No. C 04-2068 VRW

**STIPULATED SETTLEMENT
AGREEMENT AND [PROPOSED]
ORDER BETWEEN THE UNITED
STATES AND DEFENDANT DENNIS
CHOI**

22 **I. PARTIES**

23 This Stipulated Settlement Agreement and Order ("Stipulation and Order") is entered into
24 between the United States of America (the "United States"), by its attorney Kevin V. Ryan,
25 United States Attorney for the Northern District of California, and Dennis Choi ("Choi"), through
26 their authorized representatives.

27 **II. PREAMBLE**

28 WHEREAS, on or about September 1, 2000, a qui tam action was filed in the United
States District Court for the Southern District of New York (the "Civil Action"); and

1 WHEREAS, the United States intervened in the Civil Action on October 10, 2003, and
2 filed the Complaint of the United States on October 10, 2003; and

3 WHEREAS, this action was subsequently transferred to this Court by order dated May
4 13, 2004; and

5 WHEREAS, the Complaint of the United States alleges that it has certain civil claims
6 against Choi pursuant to the False Claims Act, 31 U.S.C. §§ 3729 et seq., and under the common-
7 law theories alleged in the Complaint of the United States; and

8 WHEREAS, this Stipulation & Order covers all of the conduct alleged in the Complaint of
9 the United States (hereinafter referred to as the "Covered Conduct"); and

10 WHEREAS, Choi hereby consents to the entry of this Stipulation and Order, without
11 admitting any wrongdoing or liability under the False Claims Act and/or the common law; and

12 WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted
13 litigation of the above claims, Choi and the United States desire to reach a full and final settlement
14 and compromise of the claims that the United States asserts in the Complaint of the United States.

15 III. TERMS AND CONDITIONS

16 NOW, THEREFORE, Choi and the United States, in consideration of the mutual
17 promises, obligations, undertakings, and commitments hereinafter set forth, do hereby covenant
18 and agree as follows:

19 1. Choi and the United States consent to this Court's exercise of subject matter
20 jurisdiction over this action and personal jurisdiction over each of them. Choi and the United
21 States agree that the exclusive jurisdiction and venue for any dispute arising between them under
22 this Stipulation and Order will be the United States District Court for the Northern District of
23 California.

24 2. Choi agrees to pay, in full compromise and satisfaction of the allegations set forth
25 in the Complaint of the United States, the sum of \$150,000.00 (one hundred and fifty thousand
26 dollars) (the "Settlement Amount").

27 a. Defendant Choi agrees to make the first payment in the amount of
28 \$50,000.00 no later than March 15, 2006, the second payment in the amount of \$50,000.00 no

1 later than January 1, 2007, and the third payment in the amount of \$50,000.00 no later than
2 January 1, 2008. These payments are referred to herein as the "Annual Payments." Prepayment
3 of the outstanding indebtedness is permitted at any time.

4 b. Each installment payment shall be made by electronic transfer pursuant to
5 written instructions to be provided by undersigned counsel for the United States.

6 3. Choi shall provide a copy of any tax returns filed from the date of this Stipulated
7 Settlement Agreement and Judgment through January 1, 2008 to David J. Kennedy, AUSA,
8 United States Attorney's Office, 86 Chambers Street, 3rd Floor, New York, NY 10007, within
9 ten days of the filing of such returns. If the Adjusted Gross Income ("AGI") on any income tax
10 return filed by Choi for the tax years ending December 31, 2005 through December 31, 2007, is in
11 excess of \$150,000, then Choi shall pay 10% of any excess amount above \$150,000 to the United
12 States no later than January 1 of the year following the year in which the return is filed, in addition
13 to any Annual Payment due in accordance with Paragraph 2a.

14 4. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations
15 of Choi in this Stipulation and Order, conditioned upon Choi's full payment of the Settlement
16 Amount, and subject to Paragraph 11 below (concerning bankruptcy proceedings commenced
17 within 91 days of the Effective Date of this Agreement), the United States (on behalf of itself, its
18 officers, agents, agencies, and departments) agrees to release Choi from any civil claim the
19 United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§
20 3729-3733; or the common law theories alleged in the Complaint of the United States.

21 5. Choi agrees to release the United States, its agencies, employees, servants, and
22 agents from any claims (including attorneys' fees, costs, expenses of every kind and however
23 denominated), which Choi has asserted, could have asserted, or may assert in the future against
24 the United States related to the matters covered by the Complaint of the United States, and the
25 United States' investigation and prosecution thereof and this Stipulation and Order.

26 6. This Stipulation and Order is intended to be for the benefit of the parties to this
27 Stipulation and Order only, and by this instrument the parties to this Stipulation and Order do not
28

1 release any claims against any other person or entity, except as expressly provided by this
2 Stipulation and Order.

3 7. Notwithstanding any term of this Stipulation and Order, including the releases
4 provided in Paragraphs 4 and 5, any and all of the following are specifically reserved and excluded
5 from the scope and terms of this Stipulation and Order as to any entity or person:

- 6 a. Any civil, criminal or administrative liability arising under Title 26, U.S.
7 Code (Internal Revenue Code);
- 8 b. Any criminal liability;
- 9 c. Any administrative liability;
- 10 d. Any liability to the United States (or its agencies) for any conduct other
11 than the Covered Conduct;
- 12 e. Any claims based upon such obligations as are created by this Stipulation
13 and Order.

14 8. In the event of a criminal prosecution or administrative action relating to the
15 Covered Conduct, Choi waives and will not assert any defenses he may have based in whole or
16 in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the
17 Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution,
18 this Stipulation and Order bars a remedy sought in such criminal prosecution or administrative
19 action. Nothing in this Stipulation and Order constitutes an agreement by the United States
20 concerning the characterization of the Settlement Amount for purposes of the Internal Revenue
21 laws, Title 26 of the United States Code.

22 9. Choi has provided sworn financial disclosure statements and other financial
23 information ("Financial Statements") to the United States, and the United States has relied on the
24 accuracy and completeness of those Financial Statements in agreeing to this Stipulation and
25 Order. Choi warrants that the Financial Statements are thorough, accurate, and complete. Choi
26 further warrants that he does not own or have an interest in any assets which have not been
27 disclosed in the Financial Statements, and that he has made no misrepresentations on, or in
28 connection with, the Financial Statements. In the event the United States learns of: (a) asset(s) in

1 which Choi had an interest at the time of this Stipulation and Order that would change the
2 estimated net worth of Choi set forth in the Financial Statements by ten thousand dollars
3 (\$10,000) or more, and which were not disclosed in such Financial Statements; or (b) a
4 misrepresentation by Choi on, or in connection with, the Financial Statements, and in the event
5 such non-disclosure or misrepresentation changes the estimated net worth of Choi set forth on the
6 Financial Statements by ten thousand dollars (\$10,000) or more; the United States may at its
7 option: (1) rescind this Stipulation and Order and reinstate its Complaint in this action; or (2) let
8 the Stipulation and Order stand and collect the full Settlement Amount, to which will
9 automatically be added one hundred percent (100%) of the value of the net worth of Choi
10 previously undisclosed or concealed or dissipated, if such latter amounts can be determined. To
11 the extent that the United States discovers the occurrence of an event(s) encompassed by subparts
12 (a) through (b) of this Paragraph, Choi agrees not to contest any collection action undertaken by
13 the United States pursuant to this provision.

14 10. Choi warrants that he has reviewed his financial situation and that he currently is
15 solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain
16 solvent following payment to the United States of the Settlement Amount. Further, the parties
17 warrant that, in evaluating whether to execute this Stipulation and Order, they (a) have intended
18 that the mutual promises, covenants, and obligations set forth constitute a contemporaneous
19 exchange for new value given to Choi, within the meaning of 11 U.S.C. § 547(c)(1); and (b)
20 conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a
21 contemporaneous exchange. Further, Choi and the United States warrant that the mutual
22 promises, covenants, and obligations set forth herein are intended and do, in fact, represent a
23 reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any
24 entity to which Choi was or became indebted on or after the date of this transfer, within the
25 meaning of 11 U.S.C. § 548(a)(1).

26 11. If within 91 days of the Effective Date of this Stipulation and Order or of any
27 payment made hereunder, Choi commences, or a third party commences, any case, proceeding, or
28 other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors,

1 (a) seeking to have any order for relief of Choi's debts, or seeking to adjudicate Choi as bankrupt
2 or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official
3 for Choi or for all or any substantial part of Choi's assets, Choi agrees as follows:

4 a. Choi's obligations under this Stipulation and Order may not be avoided
5 pursuant to 11 U.S.C. § 547, and Choi will not argue or otherwise take the position in any such
6 case, proceeding, or action that: (i) Choi's obligations under this Stipulation and Order may be
7 avoided under 11 U.S.C. § 547; (ii) Choi was insolvent at the time this Stipulation and Order was
8 entered into, or became insolvent as a result of the payment made to the United States; or (iii) the
9 mutual promises, covenants, and obligations set forth in this Stipulation and Order do not
10 constitute a contemporaneous exchange for new value given to Choi.

11 b. If Choi's obligations hereunder are avoided for any reason, including, but
12 not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code,
13 the United States, at its sole option, may rescind the releases in this Stipulation and Order, and
14 bring any civil and/or administrative claim, action, or proceeding against Choi for the claims that
15 would otherwise be covered by the releases provided in Paragraphs 4 and 5 above. Choi agrees
16 that (i) any such claims, actions, or proceedings brought by the United States are not subject to an
17 automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding
18 described in the first clause of this Paragraph, and that Choi will not argue or otherwise contend
19 that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Choi
20 will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations,
21 laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or
22 proceeding which are brought by the United States within 30 (thirty) calendar days of written
23 notification to Choi that the releases have been rescinded pursuant to this Paragraph, except to the
24 extent such defenses were available on October 10, 2003; and (iii) the United States has a valid
25 claim against Choi in the amount of \$150,000.00, and the United States may pursue its claim in
26 the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any
27 other case, action, or proceeding.
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1 c. Choi acknowledges that the agreements in this Paragraph are provided in
2 exchange for valuable consideration provided in this Stipulation and Order.

3 12. Choi shall be in default of this Stipulation and Order if he fails to make the
4 payments set forth in Paragraph 2 on or before the specified due dates. The United States will
5 provide written notice of the default to Choi, and Choi shall have an opportunity to cure such
6 default within ten (10) business days from the date of his receipt of the notice. Notice of default
7 will be sent by fax and overnight mail to the undersigned attorneys for Choi. If Choi fails to cure
8 the default within ten (10) business days, the entire Settlement Amount shall be immediately due
9 and payable, and interest shall accrue at the rate of 10% per annum compounded daily from the
10 date of default on the remaining unpaid principal balance. The United States, at its option, may:
11 (a) rescind this Stipulation and Order and reinstate as against Choi the Complaint of the United
12 States filed in this action; (b) seek specific performance of the Stipulation and Order; (c) seek
13 entry of Judgment against Choi for any portion of the Settlement Amount that remains unpaid; (d)
14 offset the remaining unpaid balance from any amounts due and owing Choi by any department,
15 agency or agent of the United States at the time of default; and (e) exercise any other rights
16 granted by law, or under the terms of this Stipulation and Order, or recognizable at common law
17 or in equity. Choi agrees not to contest any offset imposed and not to contest any collection
18 action undertaken by the United States pursuant to this paragraph, either administratively or in
19 any State or Federal court. In addition, Choi shall pay the United States all reasonable costs of
20 collection and enforcement under this Paragraph, including attorney's fees and expenses.

21 In the event that Choi fails to make the payment set forth in Paragraph 2 on or before its
22 due date, and the United States opts to rescind this Stipulation and Order, Choi expressly agrees
23 not to plead, argue or otherwise raise any defenses under the theories of statute of limitations,
24 laches, estoppel or similar theories, to any civil or administrative claims which relate to the
25 Conduct, except to the extent these defenses were available on the date of entry of this Stipulation
26 and Order.
27
28

1 13. The Parties each will bear their own legal and other costs incurred in connection
2 with this matter, including costs incurred in connection with the preparation and performance of
3 this Stipulation and Order.

4 14. This Stipulation and Order is governed by the laws of the United States.

5 15. Subject to the exceptions in Paragraph 7, in consideration of the obligations of
6 Choi in this Stipulation and Order, conditioned upon Choi's timely full payment of the Settlement
7 Amount, this action shall be dismissed with prejudice as to Choi as to all claims upon which the
8 United States has intervened against Choi, as described in the Complaint of the United States, and
9 to the extent of, and as governed by, this Stipulation and Order. The Court shall retain
10 jurisdiction over this Stipulation and Order and each party to the extent that the obligations herein
11 remain unsatisfied by that party.

12 16. This Stipulation and Order constitute(s) the complete agreement between the
13 Parties. This Stipulation and Order may not be amended except by written consent of the Parties.

14 17. The undersigned persons signing this Stipulation and Order on behalf of Choi
15 represent and warrant that they are authorized by Choi to execute this Stipulation and Order. The
16 United States signatories represent that they are signing this Stipulation and Order in their official
17 capacities.

18 18. This Stipulation and Order may be executed in counterparts, each of which
19 constitutes an original and all of which constitute one and the same agreement.

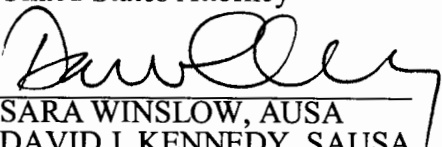
20 19. This Stipulation and Order is effective on the date that this Stipulation and Order is
21 entered by the Court.

22 IT IS SO STIPULATED.

23 Dated: December 14, 2005

KEVIN V. RYAN
United States Attorney

24
25 By:


SARA WINSLOW, AUSA
DAVID J. KENNEDY, SAUSA
Attorneys for Plaintiff, United States of America

1
2 Dated: December 2, 2005

3 FINLEY & DEATON

4 By:

5 Steven Finley
STEVEN FINLEY, Esq.
Attorney for Defendant Dennis Choi

6 Dated: December 2, 2005

7
8 Dennis Choi
DENNIS CHOI

9
10 **ORDER**

11 Pursuant to stipulation, IT IS SO ORDERED.

12
13 DATED:

14 December 21, 2005

